

**DEPARTMENT OF ADMINISTRATION
GENERAL SERVICES DIVISION
STATE PROCUREMENT BUREAU**

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**QUESTIONS AND ANSWERS ON
THE RFP PROCESS**

Prepared by the State Procurement Bureau
Montana Department of Administration
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RE: PUBLIC MEETINGS

1. How do Montana's public meeting laws apply to RFP procurement?

Section [2-3-103, MCA](#), directs agencies to develop procedures that ensure adequate notice and assist public participation before a final agency action is taken that is of "significant interest to the public." The award of a contract is considered to be such an agency action. Therefore, all RFP evaluation committee meetings involving the award of a contract must be open to the public and public notice must be given.

2. At what point in the procurement process do we have to post notice of evaluation committee meetings?

Only meetings that involve an evaluation process or competing offers where the award of a contract is considered must be posted. A meeting to discuss a "best and final offer" with a company would need to be posted since the evaluation committee is still "evaluating" competing offers in considering the award of a contract. However, meetings involving the following do not need to be posted: (a) meetings to discuss and/or draft an RFP; (b) meetings to discuss a "Request for Information" unless it involves an "evaluation" or "prequalification" process; (c) meetings involving contract negotiations since the highest scoring offeror has been selected and the evaluation process is over; (d) meetings to discuss extending/renewing a contract; (e) meetings to discuss canceling an RFP or contract; and (f) meetings to review a sole source situation.

3. How much public notice must be given?

72 hours.

4. When does the clock start running on the 72-hour notice requirement?

Once it is posted. What is important is that the information be *accessible* to the public for 72 hours; it is considered accessible once it is posted electronically. Whether the time involves working days or calendar days does not matter.

5. Are we required to specifically invite people (vendors, press) to every meeting?

No, posting the meeting notice is sufficient.

6. Do evaluation committee meetings need to be advertised in a newspaper?

No. Section [2-17-532, MCA](#), only requires that agencies use electronic access systems such as the internet to communicate information regarding upcoming public meetings.

7. Can offerors make a recording of the evaluation committee meetings and oral presentations?

Yes, anyone can.

8. Should we have a sign-up sheet at every oral presentation and meeting of the evaluation committee?

Yes, in order to document attendance. However, the public is not required to sign it.

9. Can public comment be accepted at an RFP evaluation committee meeting?

No, it is not a public hearing. The public may observe the deliberations pursuant to the “right to know” provision of Montana’s Constitution, Article II, § 9, and section [18-4-304, MCA](#), but not participate because the award of a contract must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other factors or criteria may not be used in the evaluation. However, members of the public present at an RFP evaluation committee meeting may request a public hearing on the matter if so desired.

10. Can vendors offer suggestions and/or information during meetings of the evaluation committees?

No, not unless the vendor is specifically involved in a meeting to clarify parts of its own proposal.

11. Can evaluation committee members ask questions of the vendors who might be present at an evaluation committee meeting?

No, not unless representatives from *every* submitted proposal are present and available to answer questions, and then only if the chairman of the evaluation committee feels the questions would provide critical information to the committee. The exception to this rule is noted in Question 10.

12. Do we need a procedure concerning which vendor has to give their oral presentation first?

Yes. We suggest that you consider drawing names and then allowing the first vendor to have the first pick of available time slots and so forth.

13. Do we have to release the names of the evaluation committee members?

Yes, if asked.

14. Are we required to appoint an evaluation committee for every RFP we issue?

No, there is no law or rule requiring it, but [ARM 2.5.602\(4\)](#) allows for it.

15. Can an interested party “listen in” to the evaluation committee meeting via a conference call?

Yes, unless the interested party is not willing to bear the cost of the phone call or if the agency is technically unable to honor the same request from multiple vendors.

16. Does it matter where the evaluation committee meets?

Yes, all evaluation committee meetings must be held in facilities that comply with the requirements of the Americans with Disabilities Act.

17. Do we have to keep minutes of evaluation committee meetings?

Yes, per section [2-3-212, MCA](#), minutes must be kept and available to the public. The statute lays out what must be included in the minutes.

18. Are on-site visits to a vendor’s business location considered a “public meeting”?

Yes. If a quorum of the evaluation committee will be participating in an on-site visit to a business location, the meeting must be treated as a “public meeting” and it must be open to the public and notice of the on-site visit provided.

19. Must a 72-hour notice be given to cancel an evaluation committee meeting?

No, all meeting times and places are subject to change. Interested parties should call the contact person to verify the time and location of the meeting.

20. Can an evaluation committee meeting be “continued” the next day without additional public notice?

Yes, if the evaluation committee was not able to complete its agenda for the originally posted date.

RE: OPEN RECORDS

21. When are proposals open for public inspection?

Only after the formal time/date set for opening of proposals, and then only *after* the proposals have been reviewed by a procurement officer to locate and remove any trade secrets.

22. Are draft documents open to the public?

Drafts do not need to be open unless the documents will be retained as part of the permanent procurement file. Generally, preliminary drafts of any report, letter, memorandum, or worksheet are considered “non-record” material that can be destroyed when they have served their purpose. See sections [2-6-202](#) and [2-6-401](#), MCA. *However, if litigation is involved, all documents are “discoverable.”*

23. Are individual scoring sheets open to the public?

Yes, the individual scoring sheets will be retained as part of the permanent procurement file.

24. Are draft scoring sheets open to the public?

Yes, if they are retained in the permanent procurement file.

25. Where is the final procurement file kept?

For all procurements managed by the State Procurement Bureau, the final procurement files are located in their office. If an agency handles its own proposal process (as spelled out in a delegation agreement with SPB), then the final file will be located at the agency’s purchasing office.

26. When are “best and final offer” documents available for public inspection?

The documents are available only after the time/date set for opening of the offers.

27. If a price sheet is requested to be submitted separately from the rest of the proposal, can the public inspect that information anyway?

No, only when it is “opened” will it become public information, and then only after the procurement officer has had time to review and copy the information for distribution to the committee members.

28. Should we request extra copies of proposals for public inspection?

Yes, one extra set should be requested for public inspection and copying.

29. Should we have a copying policy in place in the event interested vendors would like copies?

Yes. According to [ARM 2.5.602\(12\)](#), interested parties are responsible for making their own arrangements for making copies of proposal materials. The State Procurement Bureau allows

interested parties the use of a small photocopier at a charge of \$.10 per page. Interested parties may also bring their own photocopier into the SPB office to make photocopies.

30. Should interested parties be required to make appointments to see the documents?

Making appointments is encouraged to ensure that no one else will be trying to review/copy the documents at the same time or that the photocopier is not tied up.

31. Do we need to inform the public about who was mailed a copy of the RFP?

Yes, if asked.

32. Can we tell the public who responded to the RFP?

Yes, but only after the time/date set for receipt of proposals.

33. Can we suggest that vendors follow a “gentlemen’s agreement” to not sit in on their competitors’ oral presentations?

No, but we can convey the wishes of a vendor that everyone should agree to not attend their competitors oral presentations or clarification sessions.

34. Are evaluation matrices considered “public documents”? If so, when can they be released?

Yes. Evaluation matrices are public documents once they have been reviewed and approved by the procurement officer and the proposal responses have been released to a committee to begin its review.

35. What should evaluation committee members do with copies of bona fide trade secret information that they reviewed in the course of their evaluation of a proposal?

A master set of the information should be placed in a sealed envelope and retained in the official agency file. All other copies should be returned to the procurement officer to be shredded and discarded.

36. Can a company request that financial information be withheld from public inspection?

Yes, financial information can be withheld from public inspection provided that the information is not already publicly-released. The information must be properly marked, separated and documented to signify the vendor’s intent to withhold it from public viewing.

RE: RFP PROCESS

37. Should we retain the “single point of contact” policy?

Yes, it is very important that one person address all of the questions and information releases.

38. How many “best and final” offers should we permit?

Only one.

39. Can procurement officers provide information on the phone to vendors about a competitor’s proposal, such as the prices and the business practices of another vendor?

It depends. First, it could only be disclosed after the time set for opening of proposals and trade secret matter has been removed. Second, all information requests should always be channeled through the established point of contact. Third, the vendor has the right to see that information, but that does not imply that the agency must spend inordinate amounts of time responding to these requests when the documents are available for public inspection in the procurement office. Fourth, the procurement officer must be mindful of the need to be fair and equitable to all vendors and not neglect to promptly return calls from all inquiring vendors. The issue needs to be addressed on a case-by-case basis by the agency.